



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND
1333 ISAAC HULL AVENUE
WASHINGTON NAVY YARD DC 20376-2101

IN REPLY REFER TO

5720

Ser SEA 00A5/DON-NAVY-2017-000232F

August 11, 2017

Mr. Russell Kok
20 Lapis Drive
Fredericksburg, VA 22406

SUBJECT: YOUR FREEDOM OF INFORMATION ACT CASE DON-NAVY 2017-000232

Dear Mr. Kok:

This is a final response to your February 22, 2017, Freedom of Information Act (FOIA) request in which you seek a copy of the investigation related to a 2015 NAVSEA NNPI data spill to your emails which resulted in the Navy terminating your contract.

We conducted a search of this Headquarters files and knowledgeable personnel were able to identify and locate the requested records.

I considered your request under the FOIA (5 U.S.C. 552), as amended, and the Secretary of the Navy Instruction 5720.42F. After careful review of the requested records, I determined that some portions of those records contain information that is prohibited from disclosure under FOIA exemptions (b)(3), (b)(5), (b)(6) and (b)(7)(C).

FOIA Exemption 3 requires the withholding of information prohibited from disclosure by another statute provided that the statute "(A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld." 5 U.S.C. 552(b)(3).

32 C.F.R. Part 223 authorizes the Department of Defense to withhold information under 10 U.S.C. § 128. This Exemption 3 statute protects unclassified information pertaining to security measures, including security plans, procedures, and equipment for the physical protection of special nuclear material. In this instance, its release to the public could have a significant

adverse effect on the health and safety of the public as well as jeopardize specific day-to-day operations and activities about security measures, plans, procedures and agreements in place on a military installation.

Subsection (b) (5) protects pre-decisional and deliberative information, the disclosure of which would be detrimental to the Navy's decision-making process by creating a chilling effect on the expression of candid opinions and inhibiting the free and frank exchange of information among agency personnel. The unclassified information meets these criteria.

Additionally, as law enforcement records, portions of the reports would be redacted under exemptions (b) (6) and (b) (7) (C) which protect personal privacy.

Exemptions 6 and 7 protect the personal privacy in law enforcement records. FOIA Exemption (b) (6) requires withholding of information in files where disclosure "would constitute a clearly unwarranted invasion of personal privacy." In applying Exemption 6, a balancing test must be done, weighing the privacy interests of the individuals named in a document against the public interest in disclosure of the information requested. The public interest in disclosure is one that will "shed light on an agency's performance of its statutory duties." *Dep't of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989).

The threshold requirement in any Exemption 7 inquiry is whether the documents were compiled for law enforcement purposes, that is, as part of or in connection with an Agency law enforcement proceeding. *F.B.I. v. Abramson*, 456 U.S. 615, 622 (1982). A "record compiled for law enforcement purposes" is much broader than simply looking at whether the office that created/obtained/used the record is an office that traditionally enforces the law. So, for instance, a commander directed inquiry report, professional responsibility investigation report, or other report investigating alleged misconduct, discipline, or enforcement of rules are considered "records compiled for law enforcement purposes." The responsive records you seek are properly considered records compiled for a law enforcement purpose. Accordingly, withholding information in the record under Exemption 7 and its subparagraphs is required, as appropriate.

FOIA Exemption 7(C), 5 U.S.C. § 552(b) (7) (C), is broader than the privacy standard of Exemption 6, but only protects privacy information contained in records compiled for a law

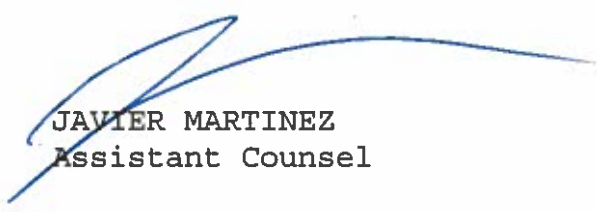
enforcement purpose. Exemption 7(C) requires withholding of records or information compiled for law enforcement purposes, where disclosure "could reasonably be expected to constitute an unwarranted invasion of personal privacy."

I am the official responsible for the denial of your request. You may submit a written administrative appeal of my decision to the Department of the Navy, Office of the General Counsel, 1000 Navy Pentagon, Washington, DC 20350. If you decide to file an appeal, it must be received within 90 calendar days from the date of this letter. If you file an appeal, attach a copy of this letter to the appeal and mark the appeal letter and the envelope FREEDOM OF INFORMATION ACT APPEAL. Mail the original appeal to the Department of the Navy, Office of General Counsel, 1000 Navy Pentagon, Washington, DC 20350. Mail a copy of your appeal to the Commander, Naval Sea Systems Command (SEA 00A5), 1333 Isaac Hull Avenue, SE, Washington Navy Yard, DC 20376-1021.

Fees for processing your request have been waived in this instance since we were unable to respond to your request within 20 working days. However, be advised that you may be charged for future requests.

If you have any questions concerning the processing of your request, please contact Ms. Ginger Dolan at 202-781-3359.

Sincerely,



JAVIER MARTINEZ
Assistant Counsel